

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SYSTEM FREIGHT, INC.

Employer-Petitioner

and

Case 4–UC–386

TEAMSTERS LOCAL 470, a/w
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO¹

Union Involved

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. *Proposed Unit Clarification*

Background

The Employer provides trucking services for paper and corrugated box manufacturers in various eastern states from Massachusetts to Virginia. The Union Involved currently represents the Employer's truck drivers and jockeys at five terminals in southeastern Pennsylvania (herein called the SEPA Terminals) in a single bargaining unit. The Employer and the Union Involved seek to clarify the unit to include the drivers and jockeys at its new Aston, Pennsylvania terminal (herein called the Aston Terminal).

¹ The name of the Union Involved was amended at the hearing.

The Employer provides dedicated fleets of vehicles and truck drivers to each of its customers. It has approximately 1500 vehicles operating out of 31 terminals located at the customers' manufacturing facilities. The Employer and the Union Involved are party to a collective-bargaining agreement for the SEPA employees that is effective from May 23, 2001 through August 8, 2006. The Employer also has collective-bargaining agreements with Teamsters Local 355 for employees at two terminals in Maryland, Teamsters Local 418 for five facilities in New Jersey, and Teamsters Local 560 for an unspecified number of other terminals in New Jersey. The Employer's truck drivers and jockeys at its other terminals are unrepresented. The Employer's main office is in Jamesburg, New Jersey.

The Union Involved represents approximately 44 truck drivers and jockeys at the SEPA terminals, which are located in Tullytown, Manayunk, and Bala Cynwyd, Pennsylvania and at two facilities in Philadelphia designated Philadelphia East and Philadelphia West.² The nearest terminal to the Aston Terminal is the Philadelphia East Terminal, which is 22 miles to the northeast of Aston, and the farthest terminal is the Tullytown Terminal, which is 53 miles to the northeast of Aston. The Tullytown Terminal employs 13 employees, the Manayunk Terminal employs 10 employees, the Bala Cynwyd Terminal employs five employees, and the Philadelphia East and Philadelphia West Terminals employ a total of 16 employees. The Employer generally ships products within 50 miles of the terminals, and its drivers' round-trip deliveries average 70 miles. Occasionally, the trips are far longer than the average and may be as long as 385 miles round-trip.

In July 2001,³ the Employer began providing trucking services for Stone Container at the Aston Terminal and permanently transferred two truck drivers there from the Manayunk Terminal. From July through October, the Employer phased in its trucking operations at the Aston Terminal while the previous carrier at that location phased out its operations. In September and October, the Employer hired 10 new truck drivers to work at the Aston Terminal for a total contingent of 12 drivers.

On October 17, Teamsters Local 312 filed a representation petition seeking to represent truck drivers and jockeys at the Aston Terminal, and on October 23, the Employer filed the instant petition. Teamsters Local 312 withdrew its petition on January 3, 2002.⁴

Truck Drivers' Qualifications and Job Duties

The Employer has a central dispatch office at its Jamesburg headquarters at which it maintains its computer system and dispatches and communicates with truck drivers.⁵ Drivers report to work at their regular terminal every day and contact the dispatch office for their first assignment. They later telephone the dispatch office after each stop to receive their next assignment and report their mileage, delivery time, load size, and bill of lading number. Drivers

² The Tullytown Terminal provides services for National Packaging Corp., the Manayunk Terminal provides services for Jeffrey Smurfit, the Philadelphia East and West Terminals provide services for Smurfit Stone Container Corp., and the Bala Cynwyd Terminal provides services for Georgia Pacific Corp.

³ All dates are in 2001 unless otherwise indicated.

⁴ Although notified of the hearing, no representative of Teamsters Local 312 attended.

⁵ Drivers at one or more of the Employer's New Jersey locations are dispatched from elsewhere.

deliver an average of two to three loads per day, and they park their truck each night at their regular terminals. The dispatch office obtains a schedule from each of its customers on a daily basis indicating when and where its products need to be picked up or delivered the following day, and dispatchers use software to determine which driver is best located to perform each assignment. Based on the efficiency of the Employer's operations, dispatchers may assign a driver to make a delivery to or from any of the Employer's terminals, even if it is not the driver's regular terminal.

According to the Employer's Chief Executive Officer and sole shareholder, James Lamarca, the only witness at the hearing, Aston Terminal drivers and the other SEPA drivers have the same skills and perform the same types of work. Thus, they all are required to have commercial drivers' licenses, three years of experience, and a clean driving record in order to be hired, and they must pass United States Department of Transportation tests. The Aston drivers work the same hours and receive the same wages and benefits as drivers at the other SEPA Terminals, and they come into contact with them when they make deliveries at the same plants. If a driver from the Aston Terminal is sick or on vacation, a driver from another SEPA Terminal will handle his or her load, and vice-versa. Drivers from all of the Employer's locations prepare the same paperwork. All of the Employer's drivers drive the same tractors and trailers, which are maintained at a maintenance shop in Barrington, New Jersey. The drivers at the Employer's terminals that are not located in southeastern Pennsylvania (herein called the non-SEPA terminals)⁶ drive the same vehicles and carry the same types of products as drivers at the SEPA Terminals and presumably have the same qualifications and job duties. Compensation for the union-represented drivers is determined by collective-bargaining agreements; but the record does not indicate how compensation is determined for employees who are unrepresented.

Supervision

The Employer's President, Michael Pagliuca, is responsible for labor relations at all of the SEPA Terminals, including the Aston Terminal. The Employer also has a Recruiting and Safety Manager, Personnel Manager and Payroll Manager, who are responsible for the entire company. Vice-President of Operations Tony Siragusa manages all of the SEPA Terminals, including Aston, and he is also in charge of the Employer's New Jersey and Baltimore terminals. The Employer does not have a manager who is exclusively in charge of the SEPA Terminals. Siragusa oversees the Employer's on-site supervisors and meets with customers as needed. His office is in Jamesburg, but he visits the southeastern Pennsylvania area about three times a week and to the Aston Terminal about once a week.⁷ Siragusa, Pagliuca and Vice-President of New Operations Anthony Imperiale⁸ are in charge of discipline for all Aston drivers and other SEPA Terminal drivers, and dispatchers may report infractions to them. Each terminal has an on-site supervisor responsible for coordinating the exchange of information between the Employer's customers and the central dispatch office, but, according to LaMarca, this supervisor is not responsible for the drivers and jockeys. Employees are hired, subject to a 30-day probationary period, at the locations where they will work. First, they are interviewed and road tested by the

⁶ These terminals were not identified in the record by name or location but only by coded numbers

⁷ Chris Gallowitz has the same duties as Siragusa for the Employer's other facilities.

⁸ Imperiale is involved with all of the Employer's newly-established facilities.

Recruitment and Safety Manager, and then they are interviewed by Imperiale, Siragusa, or Pagliuca prior to hiring. Each terminal maintains a separate seniority list.

Integration

According to the Employer's payroll records, during the period from August 5 through October 20, Aston Terminal drivers delivered loads on 437 days. On 84 of those days, they delivered loads for SEPA terminals other than Aston, and on 55 days, they delivered loads for non-SEPA terminals.⁹ In September and October, five of the 12 Aston drivers delivered loads for other SEPA locations, while seven Aston Terminal drivers delivered exclusively for Aston.

The records further show that each Aston driver was far more likely to transport loads for other SEPA terminals in August and September than in October, by which time the Aston Terminal had reached its current staffing complement.¹⁰ LaMarca testified that since October 20, there has been an increasing amount of interchange between Aston drivers and drivers from other SEPA terminals, but no records were introduced in support of this assertion.

Drivers from other SEPA terminals also delivered some loads for the Aston Terminal during the late summer and fall of 2001. During the period from August 5 through October 20, drivers from the Manayunk Terminal delivered loads for the Aston Terminal on 12 occasions, drivers from the Tullytown Terminal delivered loads for the Aston Terminal on six occasions, and drivers from the Bala Cynwyd Terminal twice delivered loads for the Aston Terminal.¹¹ During that period, drivers from the Philadelphia East and Philadelphia West Terminals did not deliver any loads for the Aston terminal.

Analysis and Conclusions

The Board will entertain unit clarification petitions to settle the question of whether employees in a new or newly-acquired facility are an accretion to existing units. *Super Valu Stores*, 283 NLRB 134, 135-136 (1987); *Pilot Freight Carriers*, 208 NLRB 853 fn. 8 (1974). The Board has followed a restrictive policy in finding accretions to existing units in order to preserve the right of employees to choose their own bargaining representative. *Archer Daniels Midland Co.*, 333 NLRB No. 81, slip op. at 3 (2001); *Towne Ford Sales*, 270 NLRB 311 (1984), enf'd. 759 F.2d 1477 (9th Cir. 1985). Thus, in *Melbet Jewelry Co.*, 180 NLRB 107 (1969), the Board emphasized that it will not, under the guise of accretion, compel a group of employees to

⁹ On some of these days, they delivered more than one load for other SEPA terminals.

The Employer's "loads delivered reports" indicate that during the period July 17 through October 16, Aston drivers delivered 138 loads for other SEPA terminals. They delivered 61 of these loads for the Philadelphia East Terminal, 61 for the Manayunk Terminal, 10 for the Bala Cynwyd Terminal, and six for the Philadelphia West Terminal. They did not deliver any loads for the Tullytown Terminal. These records did not indicate how frequently they delivered loads for non-SEPA terminals.

¹⁰ Thus, during the four-week period from August 5 to September 9, the two drivers at the Aston Terminal delivered 39 loads for other SEPA locations, an average of about 4.9 loads per week per driver. In contrast, during the three-week period from October 1 through October 20, the Employer's nine to twelve drivers delivered a total of only 16 loads for other SEPA terminals, an average of less than one load per driver per week.

¹¹ In terms of time, during this period Bala Cynwyd drivers worked for the Aston Terminal for 8 of their 325.5 total regular and overtime hours, Tullytown drivers worked for the Aston Terminal 42 of their 2827 total hours, and Manayunk drivers worked for the Aston Terminal on 106.5 of their 2141.75 total hours.

be included in an overall unit, “without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the Union to represent them.” The Board will not find an accretion when the employee group seeking accretion would constitute a separate appropriate bargaining unit. *Passavant Health Center*, 313 NLRB 1216 (1994). Rather, the Board will permit accretion to promote labor relations stability only if new employees have such strong common interests with members of an existing bargaining unit that the new employees would have been included in the unit or covered by the contract. *United Parcel Service*, 303 NLRB 326, 327 (1991), *enfd.* 17 F.3d 1518 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1076 (1995). See also *Archer Daniels Midland Co.*, *supra*. When determining if new employees have a community of interest with employees of an existing bargaining unit, the Board considers: the integration of operations; centralization of management and administrative control; geographical proximity; similarity of working conditions, skills, and functions; collective-bargaining history; and the interchange of employees. *Archer Daniels Midland Co.*, *supra*. The Board will not find a multi-facility unit appropriate even if employees share a community of interest, if that community of interest is not distinct from the community of interest that they share with employees at facilities outside the petitioned-for unit. *Acme Markets, Inc.*, 328 NLRB 1208 (1999).

Considering these factors, I find that the Aston Terminal drivers and jockeys are not an accretion to the SEPA unit. Although the employees at the Aston Terminal share a significant community of interest with the employees in the SEPA terminals, this community of interest is not separate from the community of interest they share with the Employer’s drivers at non-SEPA locations. Thus, the SEPA terminals are not a distinct administrative grouping in the Employer’s overall structure. Moreover, the Employer does not have a supervisor or manager whose area of responsibility is limited to the SEPA terminals. Various high-level supervisors of the Employer, especially Siragusa and Pagliuca, exercise supervisory authority over the Aston Terminal and the other SEPA Terminals, but they also have the same authority over numerous non-SEPA terminals. There is a high degree of centralization of administrative and managerial functions for all of the Employer’s terminals, but this centralization is not limited to the SEPA Terminals. Aston Terminal employees, along with virtually all of the other SEPA Terminal drivers and non-SEPA terminal drivers, are dispatched from the central dispatch office in Jamesburg, and all of the Employer’s drivers drive the same vehicles. There is no difference between the drivers’ skills or job duties at the SEPA facilities and at non-SEPA facilities. Aston’s geographical proximity to the other SEPA terminals is not compelling--the Aston facility is at least 22 miles and as far as 53 miles from the other SEPA facilities. See *Super Valu Stores*, *supra*. While there has been significant interchange between the Aston Terminal drivers and drivers at other SEPA terminals, especially during August and September, there has also been substantial interchange with non-SEPA terminals, albeit not as much. Thus, the Aston Terminal is not fully integrated with other SEPA terminals. As the Aston Terminal drivers do not have a community of interest with drivers from other SEPA terminals that is distinct from their community of interest with drivers from non-SEPA terminals, I find that the proposed accretion is inappropriate. *Archer Daniels*

Midland, supra. Accordingly, the Employer's request for unit clarification is denied and the petition is dismissed.¹²

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **July 8, 2002**.

Signed: June 24, 2002

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

385-7533-4000
385-7533-4040

¹² It is unnecessary to pass on whether a SEPA terminal unit including the Aston Terminal would be appropriate if a representation petition were filed for such a unit.